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TREASURY DEPARTMENT
UNITED STATES INTERNAL REVENUE

U.S. Internal Revenue Service
REGULATIONS No. 38

LAW AND REGULATIONS

RELATIVE TO

THE SPECIAL EXCISE TAX ON
CORPORATIONS ORGANIZED IN
THE UNITED STATES AND ON
CAPITAL INVESTED IN THE
UNITED STATES BY FOREIGN
CORPORATIONS

Imposed by Section 407, Title IV
Act of September 8, 1916

OCTOBER 19, 1916



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REGUATIONS NO. 38, RELATIVE TO THE SPECIAL EXCISE TAX ON CORPORATIONS, ETC., UNDER ACT OF SEPTEMBER 8, 1916.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 19, 1916.

CAPITAL-STOCK TAX LAW.

(Sections 407, 408, and 409, Title IV, act of September 8, 1916.)

SPECIAL TAXES.

SECTION 407. That on and after January first, nineteen hundred and seventeen, special taxes shall be, and hereby are, imposed annually, as follows, that is to say:

Every corporation, joint-stock^o company or association, now or hereafter organized in the United States for profit and having a capital stock represented by shares, and every insurance company, now or hereafter organized under the laws of the United States, or any State or Territory of the United States, shall pay annually a special excise tax with respect to the carrying on or doing business by such corporation, joint-stock company or association, or insurance company, equivalent to 50 cents for each \$1,000 of the fair value of its capital stock and in estimating the value of capital stock the surplus and undivided profits shall be included: *Provided*, That in the case of insurance companies such deposits and reserve funds as they are required by law or contract to maintain or hold for the protection of or payment to or apportionment among policyholders shall not be included. The amount of such annual tax shall in all cases be computed on the basis of the fair average value of the capital stock for the preceding year: *Provided*, That for the purpose of this tax an exemption of \$99,000 shall be allowed from the capital stock as defined in this paragraph of each corporation, joint-stock company or association, or insurance company: *Provided further*, That a corporation, joint-stock company or association, or insurance company, actually paying the tax imposed by section three hundred and one of Title III of this act shall be entitled to a credit as against the tax imposed by this paragraph equal to the amount of the tax so actually paid: *And provided further*, That this tax shall not be imposed upon any corporation, joint-stock company or association, or insurance company not engaged in business during the preceding taxable year, or which is exempt under the provisions of section eleven, Title I, of this act.

Every corporation, joint-stock company or association, or insurance company, now or hereafter organized for profit under the laws of any foreign country and engaged in business in the United States shall pay annually a special excise tax with respect to the carrying on or doing business in the United States by such corporation, joint-stock company or association, or insurance company, equivalent to 50 cents for each \$1,000 of the capital actually invested in the transaction of its business in the United States: *Provided*, That in the case of insurance companies such deposits or reserve funds as they are required by law or contract to maintain or hold in the United States for the protection of or payment to or apportionment among policyholders, shall not be included. The

amount of such annual tax shall in all cases be computed on the basis of the average amount of capital so invested during the preceding year: *Provided*, That for the purpose of this tax an exemption from the amount of capital so invested shall be allowed equal to such proportion of \$99,000 as the amount so invested bears to the total amount invested in the transaction of business in the United States or elsewhere: *Provided, further*, That this exemption shall be allowed only if such corporation, joint-stock company or association, or insurance company makes return to the Commissioner of Internal Revenue, under regulations prescribed by him, with the approval of the Secretary of the Treasury, of the amount of capital invested in the transaction of business outside the United States: *And provided further*, That a corporation, joint-stock company or association, or insurance company actually paying the tax imposed by section three hundred and one of Title III of this act, shall be entitled to a credit as against the tax imposed by this paragraph equal to the amount of the tax so actually paid: *And provided further*, That this tax shall not be imposed upon any corporation, joint-stock company or association, or insurance company not engaged in business during the preceding taxable year, or which is exempt under the provisions of section eleven, Title I, of this act.

SEC. 408. (Last paragraph.) Every person who carries on any business or occupation for which special taxes are imposed by this title, without having paid the special tax therein provided, shall, besides being liable to the payment of such special tax, be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not more than \$500, or be imprisoned not more than six months, or both, in the discretion of the court.

SEC. 409. That all administrative or special provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this title, and every person, firm, company, corporation, or association liable to any tax imposed by this title, shall keep such records and render, under oath, such statements and returns, and shall comply with such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may from time to time prescribe.

REGULATIONS.

Concerning the Special Excise Tax Imposed by Section 407, Title IV, Act of September 8, 1916, on Corporations, Joint-stock Companies or Associations, and Insurance Companies, Organized for Profit in the United States, and on the Capital Invested in the United States of Foreign Companies and Associations Transacting Business in the United States.

RETURNS, COMPUTATION OF TAX, COLLECTIONS, AND PENALTIES.

Tax imposed.

ARTICLE 1. Section 407 imposes a special excise tax with respect to the carrying on or doing business by corporations, joint-stock companies or associations, or insurance companies, as follows:

Corporations in the United States.

(a) Every corporation, joint-stock company or association, or insurance company, now or hereafter organized in the United States for profit and having a capital stock represented by shares, 50 cents for each \$1,000 of the fair value of the capital stock in excess of \$99,000, except as hereinafter indicated; and

Foreign corporations.

(b) Every corporation, joint-stock company or association, or insurance company, now or hereafter organized for profit under the laws of any foreign country and engaged in business in the United States, 50 cents for each \$1,000 of the capital actually invested in the transaction of its business in the United States. It is provided in cases in which the foreign corporation makes a return of the total amount of capital invested in the transaction of business, both abroad and in this country, that such proportion of \$99,000 as the amount invested in the United States bears to the total amount invested in the United States and elsewhere may be remitted in computing the tax upon the capital invested in the United States.

Corporations exempt.

Corporations and associations exempt.

ART. 2. (a) The following corporations, joint-stock companies or associations, or insurance companies, which are exempt from income tax under the provisions of section 11, Title I, are also specifically exempt from the capital-stock tax under section 407, Title IV, of this act:

First. Labor, agricultural, or horticultural organization;

Second. Mutual savings bank not having a capital stock represented by shares;

Third. Fraternal beneficiary society, order, or association, operating under the lodge system or for the exclusive benefit of the members of a fraternity itself

operating under the lodge system, and providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association, or their dependents;

Fourth. Domestic building and loan association and cooperative banks without capital stock organized and operated for mutual purposes and without profit;

Fifth. Cemetery company owned and operated exclusively for the benefit of its members;

Sixth. Corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

Seventh. Business league, chamber of commerce, or board of trade, not organized for profit and no part of the net income of which inures to the benefit of any private stockholder or individual;

Eighth. Civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;

Ninth. Club organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or member;

Tenth. Farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or like organization of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses;

Eleventh. Farmers', fruit growers', or like association, organized and operated as a sales agent for the purpose of marketing the products of its members and turning back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity of produce furnished by them;

Twelfth. Corporation or association organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title; or

Thirteenth. Federal land banks and national farm-loan associations as provided in section twenty-six of the act approved July seventeenth, nineteen hundred and sixteen, entitled "An act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create Government depositaries and financial agents for the United States, and for other purposes."

Mutual companies exempt.

(b) Inasmuch as the basis of tax is the fair value of the stock of a corporation, mutual insurance companies and other associations not having capital stock represented by shares will also be exempt from tax, in the absence of a basis for the computation of the tax.

Returns.

Tax due in January and July, 1917, and annually in July thereafter.

ART. 3. (a) Section 3237, Revised Statutes, as amended by section 53 of the act of October 1, 1890 (26 Stats., 567), provides "that all special taxes shall become due on the 1st day of July, 1891, and on the 1st day of July in each year thereafter, or on commencing any trade or business on which such tax is imposed. In the former case the tax

shall be reckoned for one year, and in the latter case it shall be reckoned proportionately from the 1st day of the month in which the liability to a special tax commenced to the 1st day of July following." The capital-stock tax, therefore, which becomes effective January 1, 1917, will be payable in January, 1917, on returns to be made during that month for the six months ending June 30, 1917. In July, 1917, and annually in July thereafter, returns must again be made and the tax paid for the ensuing fiscal year.

Returns required of every United States corporation having capital stock outstanding of \$75,000 or over.

(b) Every corporation, joint-stock company or association, or insurance company, organized in the United States for profit and having a capital stock issued and outstanding, represented by shares of the market value of \$75,000 or over, and not exempt as indicated in article 2, shall make a return on Form 707 irrespective of the par value of its capital stock, unless such corporation, joint-stock company or association, or insurance company was not engaged in business during the preceding taxable year, which for the return due January 1, 1917, shall be the fiscal year July 1, 1915, to June 30, 1916.

Return required of every foreign corporation.

(c) Every corporation, joint-stock company or association, or insurance company, organized for profit under the laws of any foreign country and engaged in business in the United States, shall make return on Form 708 irrespective of the amount of capital employed either at home or in this country in the transaction of its business.

Form of return for United States corporations.

Substance of return required from United States corporations.

ART. 4. The return required by article 3 of corporations, joint-stock companies or associations, or insurance companies, organized in the United States, shall be made on Form 707, to be supplied by this department, and shall set forth the following particulars:

- (1) Total number of shares of stock now outstanding.
- (2) Par value of shares.
- (3) Par value of total capital stock outstanding.
- (4) Amount of surplus.
- (5) Amount of undivided profits.
- (6) *Case I.*—Average market value per share during preceding fiscal year, if stock is listed on an exchange.

Case II.—If stock is not listed on an exchange, average market value per share computed from sales made during preceding fiscal year.

Case III.—If stock is not listed on any exchange and no sales have been made during preceding fiscal year, or if sales have been made and the price is unknown, the fair average value of the stock may be

estimated from the following data set forth on the return: Amount of surplus, amount of undivided profits, nature of business, estimated earning capacity, average dividends per share paid during preceding five years, average profits per share earned during preceding five years.

(7) Total number of shares of stock outstanding on last day of fiscal year.

(8) Fair value of total capital stock for preceding fiscal year.

(9) Deduction allowed by law of \$99,000.

(10) Amount of fair value of stock over \$99,000 upon which tax should be computed.

(11) Tax at rate of 50 cents per year for each full \$1,000.

(12) Amount of munitions tax, if any, paid under Title III of this act since making the last previous return.

(13) Amount of tax due.

Form of return for foreign corporations.

Substance of return required of foreign corporations.

ART. 5. The return required by article 3 of foreign corporations, joint-stock companies or associations, or insurance companies, having capital invested in the transaction of its business in the United States, shall be made on Form 708, to be supplied by this department, and shall set forth the following particulars:

(1) Amount of capital invested in the United States.

(2) Amount of capital invested in foreign countries.

(3) Total amount of capital invested in the corporation, both in the United States and elsewhere.

(4) Percentage of capital invested in the United States.

(5) Percentage of \$99,000 allowed to be deducted under the law.

(6) Amount of capital upon which tax should be computed.

(7) Tax at the rate of 50 cents per year for each full \$1,000.

(8) Amount of munitions tax, if any, paid under Title III of this act since making the last previous return.

(9) Amount of tax due.

Computation of tax.

United States corporations.

ART. 6. *Sec. 1. Companies or associations organized in the United States for profit.*—The tax on companies or associations having a capital stock represented by shares is imposed on the fair average value for the preceding year and not the face or par value of the capital stock. The fair value of the capital stock shall be ascertained as follows:

Stock listed on exchange.

(a) *Case I.*—If the stock is listed on any exchange its fair value will be determined by adding the quoted highest bid price for the

stock on the last business day of each month during the preceding fiscal year (or if no bid price was quoted on the last day then the latest day in the month on which a bid was quoted), and dividing by 12, the result being the average bid price per share for that year.

Stock not listed, but of which sales have been made.

(b) *Case II.*—If the stock is not listed on any exchange, but sales thereof have been actually made, and the price paid for the stock is known to the officer making the return, or can be discovered by him, the average price at which sales were made during the preceding fiscal year shall be the determining factor in ascertaining the fair value per share.

(In the foregoing two cases the actual fair value of the stock is ascertainable from the facts without the necessity of making an estimate.)

Cases in which fair average value of stock shall be estimated.

(c) *Case III.*—If Case I and Case II can not be applied, viz, the stock is not listed on any exchange, and no actual sales have been made during the preceding fiscal year, or if the price at which sales have been made is not known to the officer making the return the fair average value of the capital stock shall be estimated, and the surplus and undivided profits for the preceding fiscal year will be taken into consideration as required by the statute, as well as the nature of the business, its earning capacity and average dividends paid, or profits earned during the preceding five years.

Fair value of total capital stock outstanding.

(d) The fair value per share ascertained or estimated as above multiplied by the number of shares outstanding will give the fair value of the stock for taxation purposes.

Deduction of \$99,000.

(e) From this total will be deducted the sum of \$99,000, the exemption allowed by law, and the tax will be laid upon the balance at the rate of 50 cents for each full \$1,000 of the remainder.

Tax due January, 1917.

(f) Upon the returns to be made during January, 1917, for the six months ending June 30, 1917, the tax due will be 25 cents per \$1,000 of such remainder.

Deduction of munitions tax.

(g) From the tax due as so determined will be deducted the amount of munitions tax, if any, actually paid since making the last previous return. As the special excise tax on capital stock is due in January, 1917, and the munitions tax will not be determined and assessed until March or April, no deductions for munitions tax will be allowed on the January, 1917, return. Deductions, however, will

be allowed on the July, 1917, return for munitions taxes actually paid prior to that date.

SEC. 2. *Corporations, joint-stock companies or associations, or insurance companies, organized for profit under the laws of any foreign country and engaged in business in the United States.*

Foreign corporations.

(a) The tax imposed on such companies or associations shall be computed upon the actual capital invested in the transaction of its business in the United States. The basis of taxation is the *average* amount of capital so invested during the preceding fiscal year.

Deduction of proportion of \$99,000 only allowed if corporation makes return of total capital invested.

(b) The exemption from the amount of capital invested in the United States equal to the proportion of \$99,000 as the amount so invested bears to the total amount invested in the transaction of business in the United States or elsewhere shall only be allowed a company or association which makes return to the Commissioner of Internal Revenue, under these regulations, of the amount of capital invested in the transaction of business outside of the United States. Thus a foreign company or association investing part of its capital in the transaction of business in the United States shall be liable for tax in the amount of 50 cents for each \$1,000 of the actual capital invested in the United States, without deduction of the said proportion of \$99,000, unless it discloses in its return the amount of capital invested in the transaction of business outside of the United States.

Corporations not in business during preceding taxable year.

SEC. 3. *Corporations not engaged in business during preceding taxable year.*—This tax shall not be imposed upon any corporation, joint-stock company or association, or insurance company not engaged in business during the preceding taxable year, or in the case of the taxable period ending June 30, 1917, not so engaged during the year July 1, 1915, to June 30, 1916. The tax shall be computed upon each full value of \$1,000 and not on any fractional part thereof.

Collection of tax.

Special list, Form 23c.

ART. 7. On account of the impracticability of issuing stamps in the various amounts, this tax will be collected by assessment on a special list for the months of January and July, 1917, and annually thereafter in July. Any delinquent returns made in February or other months, or any assessments for delinquency in taxes, may be listed on the regular list Form 23, and collected in the usual way.

Returns retained by collector.

(a) Returns listed on special lists will be retained in the office of the collector as the special list will be prepared so as to give the essential data shown by the return.

Returns forwarded to commissioner.

(b) Returns listed on regular lists will be forwarded to this office with the list for audit.

Penalty of 5 per cent.

(c) Upon failure to pay the tax assessed within 10 days after notice and demand, a penalty of 5 per cent of the tax unpaid and interest at the rate of 1 per cent per month until paid shall be added to the amount of such tax.

Penalties.

Administrative and assessment laws applicable to this law.

ART. 8. (a) Under section 409 it is provided that "all administrative or special provisions of law, including the law relating to the assessment of taxes so far as applicable, are hereby extended to and made a part of Title IV, and every person, firm, company, corporation, or association liable to any tax imposed by this title shall keep such records and render under oath such statements and returns as shall comply with such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may from time to time prescribe."

Penalties for failure to make return.

(b) Any company or association, therefore, subject to special tax under section 407 of this act, which fails to make returns during the months of January, 1917, and July, 1917, and annually in July thereafter, will be liable to the penalties imposed by section 3176, Revised Statutes, as amended by section 16, act of September 8, 1916, which reads as follows:

Collector may make the return.

If any person, corporation, company, or association fails to make and file a return or list at the time prescribed by law, or makes, willfully or otherwise, a false or fraudulent return or list, the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise. Any return or list so made and subscribed by a collector or deputy collector shall be prima facie good and sufficient for all legal purposes.

Extension of 30 days.

If the failure to file a return or list is due to sickness or absence the collector may allow such further time, not exceeding thirty days, for making and filing the return or list as he deems proper.

Fifty per cent penalty.

The Commissioner of Internal Revenue shall assess all taxes, other than stamp taxes, as to which returns or lists are so made by a collector or deputy collector. In case of any failure to make and file a return or list within the time prescribed

by law or by the collector, the Commissioner of Internal Revenue shall add to the tax fifty per centum of its amount except that, when a return is voluntarily and without notice from the collector filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax. In case a false or fraudulent return or list is willfully made, the Commissioner of Internal Revenue shall add to the tax one hundred per centum of its amount.

The amount so added to any tax shall be collected at the same time and in the same manner and as part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax.

(c) In addition to the penalties imposed by section 3176, Revised Statutes, section 408 provides as follows:

Specific penalty.

Every person who carries on any business or occupation for which special taxes are imposed by this title, without having paid the special tax therein provided, shall, besides being liable to the payment of such special tax, be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not more than \$500, or be imprisoned not more than six months, or both, in the discretion of the court.

W. H. OSBORN,

Commissioner of Internal Revenue.

Approved:

WM. P. MALBURN,

Acting Secretary of the Treasury.





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